UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Mystic Power, LLC	)	ER18-1639-000

PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIAITON

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission")[1], the Electric Power Supply Association ("EPSA")[2] hereby submits this protest in response to Constellation Mystic Power, LLC's ("Mystic") submission of a Cost-of-Service Agreement between Mystic, Exelon Generation Company, LLC ("Exelon") and ISO New England, Inc. ("ISO-NE" or "the ISO") to the Commission for approval in the above-referenced docket. EPSA opposes this agreement on the grounds that it contains multiple unjust and unreasonable provisions.

This agreement follows the submission by Exelon of Retirement De-List Bids for the Mystic Generating Station ("Mystic 8 & 9") on March 23, 2018. Those bids notified the ISO of Exelon's intention to retire the generators at its Mystic facility when the existing Capacity Supply Obligations ("CSO") associated with the plant expire on May 31, 2022. After Exelon's announcement, the ISO studied the retirements of Mystic 8 & 9, and determined that the loss of those units would present unacceptable fuel security

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1 18 C.F.R. §§ 385.211.

2 Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA filed a doc-less intervention in this proceeding on May 4, 2018.

risks. Specifically, the ISO's analyses establish that retirement of Mystic 8 & 9 would cause the ISO to deplete 10-minute operating reserves (a violation of mandatory reliability criteria) on numerous occasions and, further, to instigate load shedding—rolling blackouts—during the New England winters of 2022-2023 and 2023-2024.[3] Following this analysis, the ISO submitted a petition for waiver of certain provisions of the ISO's Transmission, Markets and Services Tariff ("Tariff") to hold Mystic Units 8 and 9 for fuel security ("ISO-NE Waiver Request").[4]

I. COMMENTS

EPSA takes reliability concerns extremely seriously and respects ISO-NE for its vigilance in ensuring the reliable operation the New England electric grid. That noted, the instant agreement is not consistent with Commission precedent and does not produce just and reasonable rates for consumers. EPSA therefore urges the Commission to reject the proposed contract for the reasons outlined below.

A. Costs Associated With Distrigas Should Not Be Included In Cost-of-Service Rates

In its proposed agreement, in addition to the costs of operating the Mystic facility, Exelon has requested that the costs of operating the Distrigas of Massachusetts, LLC Liquified Natural Gas facility ("Distrigas" or "Everett") be included in the Cost-of-Service determination, which under Engie's ownership is not an ISO-NE market participant (see discussion below).[5] This provision is particularly egregious and legally unsound. In

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[3] Docket No. ER18-1509, ISO-NE Waiver Request, p. 3.

[4] Docket No. ER18-1509. EPSA filed a protest of this waiver with the Commission on May 23, 2018.

[5] Exelon Cost of Service filing, which states: "Because the sole source of fuel for Mystic is vaporized LNG from Everett, the Cost-of Service Agreement includes recovery of the actual monthly fuel supply costs incurred at Everett. This is necessary to ensure that Mystic has adequate fuel supply to provide the needed reliability service and to ensure that it receives adequate revenues to stay in operation during the reliability term."

addition to distortions that this agreement would likely provide to the LNG market in New England,[6] there are grave concerns regarding the impact to the ISO-NE market. As the New Hampshire Public Utilities Commission and Office of Consumer Advocate point out, "there is…a significant question whether the costs of an LNG import terminal with multiple customers can be legally recovered through a wholesale electricity tariff under the Federal Power Act."[7] Including the costs of an upstream fuel facility – ***all*** the costs of an entirely separate business offering service to an array of customers on a market-wide basis – is so far afield on its face that it may well present an issue of first impression for the Commission. Certainly it is an overreach for an individual resource to receive cost recovery for the full cost of its vertical supply chain, even under the guise of a reliability issue. This would likely be the case even if Distrigas were dedicated solely to the provision of fuel stock for the Mystic plants. To go further, the costs of the Mystic LNG contracts alone would require scrutiny as to inclusion in any cost-of-service rate. Certainly, the attempt to recover all costs associated with the full facility is unjust, unreasonable, and would set a dire precedent by opening the door for other resources that are able to situate themselves such that this sort of overpayment is a requirement for remaining online and providing power to its regional market.

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[6] Comments of Repsol at pp. 4-5 in ISO-NE Waiver Docket: "The approval of the ISO's requested tariff waiver and the cost of service tariff proposed by Exelon will provide an undue preference to Everett to the detriment of other LNG providers in the region, including Canaport. By compensating Mystic for its fuel costs to be supplied exclusively by Everett and incenting them to have inventory available for peak days without providing a market mechanism for other generators to secure LNG supplies from other suppliers, the ISO is creating an uneven playing field for other LNG suppliers in the region, some of which have the ability to provide even greater levels of fuel security than those attributed to Everett. Further, depending upon the structure of the cost of service tariff proposed by Exelon between the Mystic facilities and the ISO, the Commission's approval could further un-level the playing field by creating cross-subsidies between Everett's gas supply service to the Mystic facilities and other gas supply services not related to Mystic."

[7] Comments of New Hampshire Public Utilities Commission in ISO-NE Waiver Docket at p. 4.

Additionally, the inclusion of all Distrigas costs in this agreement presents significant market power issues. While the Distrigas LNG facility can arguably represent an important fuel source for the regional electricity market, acquisition of Distrigas has now created a “reliability loop” in which the viability of the Mystic units is predicated on the continued operation of Distrigas, and conversely the viability of Distrigas is predicated on the continued operation of the Mystic units. While the basic premise of this relationship may have been true had Engie retained ownership of Distrigas, the acquisition of Distrigas by Mystic’s owner exacerbates this scenario due to the vertical market power exercised in the quest for cost-of-service recovery.

In a related proceeding, the Eastern New England Consumer-Owned Systems (“ENECOS”) raise concerns over the ownership of both the power and LNG facilities to be deemed critical by one corporate entity. ENECOS explains, “the market power implications of consolidating that kind of critical period capability[8] with significant regional generation ownership deserve careful evaluation before the consolidation occurs. That evaluation will have to occur under Section 3 of the Natural Gas Act (15

[8] *See* ENGIE explanation of the capability of the Distrigas facility, Commission May 9, 2016 Technical Conference, Docket No. RP16-618-000, Algonquin Gas Transmission, LLC: “ENGIE gas and LNG imports liquefied natural gas into the Distrigas Everett import terminal up in Massachusetts. For gas that is re-gasified or vaporized gas and liquid, and we can do that simultaneously. We have 3.4 BCF of storage onsite. Our install re-gasification capacity is 1 BCF a day, and we can do 100 trucks for 100,000 MMBTUs. Our maximum single day send out to the Algonquin system is in excess of 276,000 [MMBtu]. Our maximum delivery day to the system is in excess of 737,000 MMBtu’s. We can process 210 BCF of LNG per annum. We connect directly into the two existing interstate natural gas systems serving New England, the Tennessee system, and the Algonquin system. We also directly connect into National Grid’s distribution system to the Boston Gas system, and we have a direct connection to the Exelon Mystic Power Station. And we serve these systems, as has been discussed, moving gas from east to west, so on a back-haul basis. So that’s a wrinkle in the discussion of constraints that are coming into the system. We can actually move gas into that direction. And on peak days we tend to be able to move more of it on a back-haul basis. And our sendout can be varied from an hourly rate from zero to 31,000 MMBtu’s per hour, and we can also back a no notice service out of our facility.”

U.S.C. § 717b)."[9] Even in the event of such a review, should this agreement be approved as filed, the Commission will be condoning Exelon's ability to create a fully integrated asset out of whole cloth.

The fact pattern that led to this situation is worth reviewing. On the same day and in the same press release that Exelon announced the retirement of Mystic 8 & 9, the company announced a deal to purchase Distrigas from Engie.[10] Prior to this arrangement, the viability of the Distrigas facility was subject to market conditions, with Engie having no ability to petition the ISO for an RMR, as the Distrigas facility is not an ISO-NE market participant. However, with Distrigas under Exelon's control, Exelon is now able to exploit a vulnerability and utilize its newfound vertical leverage to arbitrage the ISO, decimating the operation and spirit of the competitive market for both natural gas and power.

B. The Term of the Agreement is Unjust and Unreasonable

The two-year duration of the agreement sought is unwarranted and unprecedented, based solely on the demands from Exelon rather than a reasonable approach to ensuring reliability in 2022/23 and 2023/24.[11] Should such an agreement be authorized, EPSA contends that it would also be unduly discriminatory. Virtually all other RMR agreements are undertaken on a yearly basis; there is no justification—beyond the demands of one company—to award a two-year RMR agreement in the

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[9] Protest of the Eastern New England Consumer-Owned Systems in ISO-NE Waiver Docket at p. 4

[10] *See Press Release:* Exelon Generation Files to Retire Mystic Generating Station in 2022, Absent Any Regulatory Solution, March 29, 2018: https://www.businesswire.com/news/home/20180329005638/en/Exelon-Generation-Files-Retire-Mystic-Generating-Station

[11] ISO-NE Waiver Filing at p. 15 "Exelon is willing to continue operation of Mystic 8 & 9—i.e., to delay retirement—only if it receives certainty before the running of FCA 13 in February 2019 that it can recover its full cost of service for Mystic 8 & 9 for the two-year period from June 1, 2022 through May 31, 2024"

instant matter. If an unexpected and unresolvable situation requires further RMR treatment, the agreement should be extended annually and approved by the Commission, as has been done in the past for certain complex situations. Should the Commission authorize this two-year RMR, the Commission opens the door for other resources to make similar demands in the future once deemed necessary for reliability. Should this trend proliferate in the ISO-NE market, the markets will be distorted and all other market participants harmed. Therefore, this extended RMR term should be avoided at all costs.

Additionally, if approved, the agreement at hand would be in conflict with the Commission's existing policy on RMR agreements. The Commission has stated that it believes that "RMR filings should be made only to temporarily address the need to retain certain generation until more permanent solutions are in place and that *all alternatives should be considered to ensure that designating a generator for RMR service is a last resort option for meeting immediate reliability need.*"[12] A two-year arrangement as proposed can and will perpetuate out-of-market approaches, undermine price formation, deter the development of in-market solutions, and contravene the Commission's existing policy.[13]

On a related point, Exelon notes that the Mystic facility could decide to reenter the market at the conclusion of the RMR term if market conditions warrant. Exelon recognizes, however, that full recovery of the capital expenditures incurred during the term of the agreement may be unreasonable and offers "to provide a 'clawback' process

12 *See*, e.g., NYISO, 150 FERC ¶ 61,116 at p. 11 (emphasis added).

13 *See*, e.g., PJM Interconnection, L.L.C., 107 FERC ¶ 61,112, at PP 20-21 (2004); Midwest Indep. Transmission Sys. Operator, Inc., 108 FERC ¶ 61,163, at P 368, reh'g denied, 109 FERC ¶ 61,157 (2004) (RMR program is backstop measure designed to meet short-term reliability need).

to refund certain capital expenditures incurred during the reliability term if the units remain in service past the termination date."[14] If the Commission does not reject the proposed agreement outright, then, at a minimum, the Commission should mandate that appropriate capital expenditure costs be clawed back from Exelon upon its reentry into the market..

II. Conclusions

For the reasons outlined above, EPSA respectfully submits the RMR agreement proposed is unjust and unreasonable. ESPA requests that the Commission reject this agreement and encourage ISO-NE to seek equitable, in-market solutions ahead of 2022.

Respectfully submitted,

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[14] *See* Exelon Cost of Service filing at p. 16. ("Mystic proposes to recover the capital expenditures necessary to reliably operate the units over the two-year reliability term of the Cost-of-Service Agreement.99 This approach is just, reasonable, and consistent with Commission-approved reliability service agreements.100 Any other approach would be unjust and unreasonable, because Mystic, as mandated by the Tariff, currently has no future opportunity to recover these costs past the reliability term upon its retirement. Mystic is willing, however, to provide a "clawback" process to refund certain capital expenditures incurred during the reliability term if the units remain in service past the termination date.101 The ISO-NE Tariff does not contemplate such a provision, but this item could be addressed in the settlement process if this matter is set for hearing and settlement.")

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., June 6, 2018.

/s/

Bill Zuretti, Director, Regulatory Affairs, and Counsel